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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189666

DATE: December 14, 1977

MATTER OF: J. A. Reyes Associates Inc.

DIGEST:

Would-be protester, arguing that winning proposal does not meet evaluation criteria listed in RFP, has notice of basis for protest upon receipt of copy of that proposal. Protest filed after debriefing is untimely when only purpose of debriefing is to provide details concerning evaluation of protester's own proposal, not to discuss winning proposal.

J. A. Reyes Associates Inc. (Reyes) has protested award by the Office of Minority Business Enterprise (OMBE), Department of Commerce, of a contract to the Minority Trucking-Transportation Development Corporation (Minority Trucking).

OMBE issued request for proposals (RFP) No. 6-36481 on May 3, 1976, seeking a contractor to organize and operate a national minority trucking assistance organization; initial closing date was June 2, 1976. After extended negotiations, a cost reimbursement contract, not to exceed \$247,157, was awarded to Minority Trucking on April 19, 1977. Reyes was notified of the award on that date.

Reyes' protest is based primarily on alleged defects in the winning proposal. Reyes contends that Minority Trucking did not offer the lowest price and that the technical section of the winning proposal did not include a detailed description of the offeror's proposed methods or resumes of personnel expected to be assigned to the contract, as required by the RFP. In addition, Reyes questions the responsibility of Minority Trucking, citing, among other things, lack of personnel experienced in trucking and inadequate or unproven financial resources. Reyes concludes that its own proposal was more comprehensive and that its firm was better qualified for award.

Reyes' protest, dated July 12, 1977, was not received in our Office until July 21, 1977. Because three months elapsed between notice of the award to Minority Trucking and filing of the protest, the initial issue in this case is whether the protest is timely. Our

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Bid Protest Procedures require that protests be filed--defined as received in our Office--not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. 20.2(b)(2) (1976).

OMBE cites the following chronology in support of its argument that the protest is untimely: on April 25, 1977, OMBE received requests from Reyes for a debriefing and for copies of the winning proposal. The latter request was made under the Freedom of Information Act, 5 U.S.C. 552 (1970). On May 11, 1977, OMBE informed Reyes that the winning proposal would be available upon payment of a \$5.11 copying fee, but that Minority Trucking's cost breakdown would be omitted because it contained confidential commercial and financial information which was exempt under the Act. On June 3, 1977, Reyes' check was received by OMBE and a copy of the winning proposal was mailed.

As for the debriefing, OMBE states that numerous unsuccessful attempts were made to reach Reyes to arrange for one during April and early May, and that in any case the May 11, 1977 letter to Reyes stated that one would be arranged at a mutually convenient time. Reyes did not contact OMBE until July 7, 1977, at which time a debriefing was scheduled for July 12, 1977. The purpose of the debriefing, OMBE states that Reyes was told, was to apprise the firm of what OMBE regarded as strong and weak points in evaluation of its proposal. Reyes was told that there would be no discussion concerning the winning proposal. OMBE further states that Reyes had been given much of the information regarding deficiencies in its own proposal in October 1976, during the course of negotiations. Thus, OMBE concludes, Reyes knew or should have known the basis of its protest at least upon receipt of the winning proposal, mailed June 3, 1977.

Reyes, on the other hand, states that it lacked sufficient information to protest until the July 12, 1977 debriefing. Reyes acknowledges that staff members reviewing Minority Trucking's proposal were convinced that it was deficient in a number of areas, but argues that they needed to know "the evaluative relationship between the technical and cost criteria, its impact on the selection process, and the results of how our proposal fared relative to the selection." Reyes also sought to determine what changes had been made in the winning proposal during negotiation, and whether the relative standing of its proposal had been affected by these changes.

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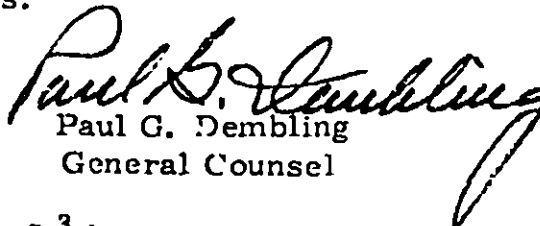
In our opinion, Reyes' protest is untimely. We have permitted protesters arguing that their own proposals were improperly rejected to wait until after debriefing to file protests when, for example, the contracting agency has not stated all the grounds for unacceptability until that time. See Systems Analysis and Research Corporation, B-187397, February 4, 1977, 77-1 CPD 90. In at least one instance, we also have permitted a protester arguing that a successful proposal was defective to wait until debriefing before protesting to our Office. Lambda Corporation, 54 Comp. Gen. 468 (1974), 74-2 CPD 312. In that case, the protester received a copy of the awardee's proposal and noted deficiencies therein, but waited eight days, until a scheduled debriefing at which it apparently hoped to resolve its complaint, before filing a protest.

We believe, however, that in order to provide a basis for protest, a debriefing must be promptly arranged and that the unsuccessful offeror must, as in the cases cited, have a reasonable expectation of either learning additional grounds for protest or of resolving the protest with the contracting agency. When one is sufficiently informed of a basis for protest before debriefing, it would be inappropriate to permit a delay in filing until after debriefing, since no useful purpose would be served. Informatics, Inc., B-188564, April 18, 1977, 77-1 CPD 272.

In this case, the solicitation contained detailed evaluation criteria, with a specific number of points accorded to each. Because the debriefing was not for the purpose of providing information concerning evaluation of Minority Trucking's proposal, Reyes must be held to have had notice of any basis of protest concerning defects in that proposal upon receipt of it for comparison with the evaluation criteria contained in the RFP. Cf. Development Associates, Inc., 56 Comp. Gen. 580 (1977), 77-1 CPD 310, another case involving Reyes, in which the time for filing a protest began to run when the protester received charts showing the relative scores of all offerors under each evaluation criteria.

As for learning additional grounds for rejection of its own proposal, we believe that Reyes was less than diligent in pursuing a debriefing by OMBE. When the debriefing finally was held three months after award, Reyes apparently learned only details regarding inherent defects in its proposal which OMBE had identified previously, during the course of negotiations.

Accordingly, we find Reyes' protest is untimely and must decline to consider it on the merits.


Paul G. Dembling
General Counsel